



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 23, 1998

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR98-0237

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111945.¹

The Travis County Sheriff's Department (the "department") received a request for a copy of the criminal case files of a person who committed suicide in his home. You assert that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the documents submitted.

Section 552.101 protects information when disclosure of the information would constitute the common-law tort of invasion of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision Nos. 628 (1994) at 4, 579 (1990) at 2, 562 (1990) at 9. Information may be withheld under section 552.101 in conjunction with the common-law right of privacy if: (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) the information is of no legitimate concern to the public. *See* Open Records Decision No. 628 (1994). The marked portions of the handwritten notes and documents that you submitted as "Exhibit A" are not highly intimate or embarrassing facts. Information is not excepted by common-law privacy merely because it might embarrass individuals. *See* Open Records Decision No. 316 (1982). Thus, the marked portions of the documents submitted under "Exhibit A" must be released.

¹We note that a previous request to the Austin City Attorney involving the same individual encompassed documents generated before January 1, 1996. Open Records Letter No. 98-0187, ID# 111695.

You next claim that section 552.101 excepts from disclosure criminal history report information ("CHRI"). We note that generally, such information is confidential and not subject to disclosure. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, in reviewing "Exhibit B" we agree that you must withhold the CHRI from the requestor.

Next, we observe in "Exhibit B" that you also seek to withhold driver's license number and motor vehicle tag number under section 552.130. The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

After reviewing your arguments, we conclude that you must withhold the driver's license number and motor vehicle registration numbers contained within "Exhibit B" pursuant to section 552.130.

It is apparent from its face that the document contained within "Exhibit C" has been filed with the court. Therefore, if "Exhibit C" has been filed with the court, it has become public record and may not now be withheld from required public disclosure. *See e.g., Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).²

Section 552.108 provides in part that

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

....

(3) it is information that:

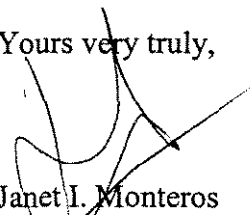
(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

We conclude that section 552.108(a)(3)(B) of the Government Code excepts from required public disclosure the documents contained within "Exhibit D." Because section 552.108 is dispositive, we need not address the applicability of the section 552.111 exception to "Exhibit D."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Janet I. Monteros
Assistant Attorney General
Open Records Division

²As 42 CFR § 2.00 *et seq* pertains to federally assisted alcohol abuse or drug abuse programs and you do not indicate whether such programs are implicated in the instant case, we do not address their application in the instant case. *See* 42 CFR § 2.12(a)(2). Additionally, as we apply sections 552.101, 552.108, and 552.130 we will not address the remaining exception.

JIM/alg

Ref: ID# 111945

Enclosures: Submitted marked documents

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(w/o enclosures)